



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

nullified by legislative action.⁶ These facts suggest that on principle the Workman case might possibly bear reconsideration. The real basis of the doctrine of the last named case is that the public interest is so vitally involved in the sale of a fractional portion of a railroad right of way that it must be presumed that the legislature did not intend general words such as "land," or "property," as used in the authorization of the sale,⁷ to include such property as a fractional portion of a railroad right of way. The fact that the public interest is vitally concerned is a prerequisite to the application of this doctrine. But, in reality, would the public interest be vitally affected by the authorization of the sale of a fractional portion of a railroad right of way? Theoretically, it might possibly have been argued prior to 1915 that this question should be answered in the affirmative, but in that year the legislature cut the last prop from under this argument by giving the Railroad Commission power to co-ordinate, in the public interest, the service of the various railroads of the state:⁸ practically, this question could never have been answered in the affirmative, for no solvent railroad would ever allow its road to be cut in two to pay a validly levied special assessment. If the situation ever actually came to a point where it was either a question of the railroad's paying the assessment, or having a portion of its right of way sold, the railroad would choose the former course. The anomaly of freeing any one—even one exercising such a high public trust as a railroad—from the duty of bearing his share of the expense of public work ought, if possible, to be avoided.

R. E. H.

PERSONS: THE STATUS OF CONVICTS.—The Corpus Juris of Justinian imposed the loss of the *status libertatis* on one condemned of crime. This meant not only the loss of liberty but the loss of juristic personality and civil rights as well.¹ So also by the ancient common law one guilty of treason or other felony suffered the double penalty of loss of liberty and loss of legal existence denominated civil death.² So persistent in juristic thought has been this ancient conception of loss of status or capacity as incident to conviction for crime, that we find a ban, in many

⁶ *Gilsonite Construction Co. v. St. Louis, I. M. & S. Ry. Co.* (1912), 240 Mo. 650, 144 S. W. 1086; *Heman Construction Co. v. Wabash R. Co.* (1907), 206 Mo. 172, 104 S. W. 67; *Wisconsin, Laws of 1903*, Ch. 25; *Chicago, M. & St. P. Ry. Co. v. City of Milwaukee* (1912), 148 Wis. 39, 133 N. W. 1120.

⁷ *Cal. Stats.* 1899, p. 157; *Cal. Stats.* 1891, p. 196; *Cal. Pol. Code*, § 3466.

⁸ *Cal. Gen. Laws*, Art. 2886, § 22.

¹ *Sohm's Roman Law*, Ledlie (1892), 122.

² 1 *Bl. Com.* 132, 133; 4 *Bl. Com.* 336; *Co. Litt.* 199, 200, 132; *Avery v. Everett* (1888), 36 *Hun.* 6, 110 *N. Y.* 317, 18 *N. E.* 148, 1 *L. R. A.* 264, 6 *Am. St. Rep.* 368.

respects similar to the loss of the *status libertatis* of the Romans and to the *civiliter mortuus* of common law, imposed upon felons by the law of California to-day.

Due to the limited number of adjudicated California cases the status and capacity of convicts in this state is to some extent unsettled. The recent case of *Castera v. Superior Court*³ has, however, determined the status of convicts as regards civil actions to which the prisoner is a party. The following three questions are suggested by the case: can a convict sue, can a convict be sued, and, finally, if he can be sued, can he defend himself? The court held that section 673 of the Penal Code imposing civil death upon convicts sentenced for life, and section 674 imposing "the loss of all civil rights" upon those in state's prison for less than life, did not prevent a convict from being sued although it did prevent the convict from bringing suit. This decision is in accord with the common law rule.⁴ The final question, can a convict defend himself if sued, was not decided by the court. Justice and reason would, however, dictate that he should be allowed to defend a suit brought against him, and a New York court has so held in a decision under a statute similar to ours.⁵

Before attempting more completely to indicate the rights and disabilities of convicts, the sources of these rights and disabilities should be noted. An early California case held that "the disabilities imposed by the common law upon persons attainted of felony are unknown to the laws of this state."⁶ No consequences, therefore, follow conviction except such as are declared by the Penal Code, by judicial decisions thereunder and by the state constitution. What are the rights and disabilities so declared? In general, to quote the language of the Supreme Court of California, it may be said that a convict is deprived of "all rights whose existence or enjoyment depends upon some provision of positive law."⁷ A specific enumeration of the rights lost includes among others, political and contractual rights, the rights of suffrage, marriage, and inheritance, and finally the right to remain at liberty and enjoy the benefits of one's own labor.⁸ The rights and capabilities retained embrace the right to the protection of one's person, the capability of making and acknowledging a sale or conveyance of property, competency as witness in a trial of a criminal action and

³ (Feb. 15, 1916), 23 Cal. App. Dec. 61, 159 Pac. 735.

⁴ *Guarantee Co. v. First Nat. Bank* (1898), 95 Va. 480, 28 S. E. 909.

⁵ *Avery v. Everett* (1888), 36 Hun. 6, 110 N. Y. 317, 18 N. E. 148; 1 L. R. A. 264, 6 Am. St. Rep. 368; *Bowles v. Haberman* (1884), 95 N. Y. 247.

⁶ *Matter of Estate of Nerac* (1868), 35 Cal. 392, 95 Am. Dec. 111.

⁷ *Estate of Donnelly* (1899), 125 Cal. 417, 58 Pac. 61, 73 Am. St. Rep. 62.

⁸ Cal. Civ. Code, § 1556; 2 California Law Review, 401; Cal. Const. Art. II, § 1, Art. 4, § 25. See *supra*, n. 7; Cal. Pen. Code, §§ 673, 674.

in conclusion the benefit of having the statute of limitations cease running against him while in prison.⁹

Having observed the status of the criminal in Roman law, at common law, and finally under California law, it will perhaps be not inappropriate to conclude with a brief suggestion as to what his status ought to be in the future. The tendency of modern juristic thought, as found in the criminal statutes of some of our progressive states, is away from the harshness and barbarism of the Roman and common law. Civil death seems today a somewhat impracticable and doubtful penalty. It is hard to apply and often inflicts a greater injury upon the innocent family or relatives of the felon or even upon the state itself, in tying up his property, than it does upon the convict. And finally, it is not in accord with the modern notion that imprisonment of the felon is rather a means for protecting society, than a punishment imposed upon the individual. A statute similar to that in New York or Kansas, providing for the appointment of a trustee to administer the felon's affairs would as a practical matter accomplish all that is desired, and at the same time might well meet with the approval of many who would be unwilling to see the rules relating to civil death completely abrogated.¹⁰

H. A. J.

VENDOR AND PURCHASER: NATURE AND WAIVER OF VENDOR'S LIEN.—In *Braun v. Kahn*¹ the vendor sued on a note given for the balance of the purchase price of real estate and obtained a money judgment. He caused an issuance and levy of execution thereon. Later he abandoned his execution lien and commenced an action on the judgment recovered on the note. In this action he claimed a vendor's lien and asked to have the property sold to satisfy this lien. The court, overruling dicta in early California cases,² allowed the recovery. The defendant appealed alleging that the plaintiff had waived his vendor's lien by bringing a personal action and obtaining a personal judgment on the note followed by execution thereon. The lien of an unpaid seller of real estate, although suggested by the Roman law covering the sale of personal property, is a creation of the English Courts of Chancery.³ Many states, including California, following the English cases, hold that the lien exists irrespective of express reservation.⁴ "Upon principle,"

⁹ Cal. Pen. Code, §§ 676, 675; Cal. Code Civ. Proc., § 328.

¹⁰ *New v. Smith* (1906), 73 Kan. 174, 84 Pac. 1030; Kansas Gen. Stat. 1901, §§ 2301, 5776, 5780, 5781; *Bowles v. Haberman* (1884), 95 N. Y. 247; 2 Revised Statutes of N. Y., § 15; N. Y. Pen. Code, § 707.

¹ (Aug. 18, 1916), 23 Cal. App. Dec. 263.

² *Fitzell v. Leaky* (1887), 72 Cal. 477, 14 Pac. 198; *Longmaid v. Coulter* (1898), 123 Cal. 208, 55 Pac. 791.

³ *Mackreth v. Symmons* (1808), 15 Ves. 329, 33 Eng. Rep. Repr. 778. See also 2 Story, Equity, (13th ed.), p. 563.

⁴ 2 Jones on Liens (2nd ed.), § 1063.